

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	Customer No.
VEGLIANTE et al.	:	26817
	:	
Serial No. 09/741,521	:	Group Art Unit: 3724
	:	
Filed: December 20, 2000	:	Examiner: Sean M. Michalski
	:	
Title: FILM CUTTER ASSEMBLY	:	Confirmation No. 6443
	:	x

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SUPPLEMENTAL DECLARATION
OF PAUL VEGLIANTE SUBMITTED UNDER 37 CFR 1.132

Sir:

I, Paul Vegliante, Executive Vice President of Operations of AEP Industries, Inc. (hereinafter referred to as "AEP"), assignee of the above-referenced application, with offices located at 125 Phillips Avenue, South Hackensack, New Jersey 07606, and an inventor of the above-described patent application, hereby declares as follows:

1. I am the same Paul Vegliante who submitted the previous Declaration Of Paul Vegliante under 37 CFR 1.132, in connection with the instant patent application. I submit this Supplemental Declaration in furtherance of my previous Declaration, the entirety of which I incorporate herein by reference, and to supply additional evidence concerning film cutter invention claimed in my patent application.

2. I have reviewed the prior art that has been cited during the prosecution of the instant application, and have found and believe that there is one very important distinction between the prior art and my claimed invention. An important matter, which is applicable to all of the rejections in the Action, including those based upon the combination of Lucas and

Wankow, and the Chuang reference and device, one must point to one very important distinction between the prior art and the claimed invention. None of the cited prior art references discloses a rail surface that provides cohesion between a rail surface and the film, as opposed to friction or adhesion, to enable the film to be cut by the cutter blade, both before during and after cutting. Cohesion, adhesion and friction are scientifically different instrumentalities. Cohesion or cohesive attraction is a property of substances, *caused by the intermolecular attraction between like-molecules* within the substances or materials that act to unite them. Adhesion is the tendency of certain *dissimilar molecules* to cling together due to attractive forces. Friction or dry friction uses a *static charge* to create an attraction between the surfaces of materials. The use of cohesion in the rail cutter of the instant invention, by *intermolecular attraction* of like molecules, is unique over the prior art in that it very firmly holds the film to be cut in place, before, during and after cutting, in a manner that is superior to the prior art devices that use friction, vinyl spots, rollers, hand pressure and similar means, as disclosed in the cited art.

3. Wankow, the only reference that arguably uses vinyl spots for some cohesion, teaches away from the present invention. Wankow's vinyl spots do have cohesion but are used to stop static cling from pulling the film back inside the box. The vinyl spots of Wankow teach away from the invention because they are positioned on the opposite side of the serrated cutting blade. The serrated cutting blade acts as a fulcrum where the opposite side of the vinyl spots needs to have hard, quick movement in order to serrate the film against the blade. The argument that Wankow's spots help in cutting goes against the laws of physics. On one side of the fulcrum Wankow uses three spots with very small cling properties to hold the film still (which is 1/10 the thickness and weight of paper). Very little cling is needed to avert the forces of static friction. On the opposite side, by way of common sense and physics, the cutting blade needs movement of the film and substantial downward pressure to cut the film on the static serrated blade. The claim that it aids in cutting is without merit. Because Wankow's spots have nothing to do with the cutting operation the claim that the combination of Lucas and Wankow renders that claims obviousness also holds no merit. The dots of Wankow are not used in the cutting mechanism at all; therefore a correlation between instant invention and the vinyl spots cannot be made.

Commercial Success Of The Invention

4. As I stated in my previous Declaration, the AEP slide cutter corresponds to claim 1 of the instant patent application. Further, it should be noted that the slide cutter as a whole is what is embraced by claim 1. That is, the AEP slide cutter is not a part or component of some other larger product.

5. Attached hereto as Exhibit G is graphic excerpt of an economic data summary from an independent Plastic Wrap Market Report ("PWMR"). The PWMR is issued annually and provides independent and reliable sales information and analyses concerning the Plastic Wrap Market, including such information and analyses for film cutters sold with plastic wrap. As shown on the lower right hand corner of Exhibit G, the PWMR is based on independent data from ACNielsen Scanned Data and Wal-Mart HomeScan Data.

6. The PWMR in Exhibit G is based on the ACNielsen and Wal-Mart data for the 52 week period ending January 29, 2005. Id., lower right hand corner.

7. As shown in the PWMR, approximately 89 million units of film cutters were sold during the relevant period. Also, as shown, Reynolds (16%) and Saran (8%) totaled approximately 25% of the market. During that period, Saran was an AEP customer, and, to the very best of my knowledge, sold the AEP film cutters which are the subject of the claims of the instant patent application, and Reynolds was infringing the instant patent application. Thus, according the objective and independent data of ACNielsen and Wal-Mart, the assignee of the instant patent application penetrated, by 2005, at least 25% of the market for all film cutters. And, these figures exclude the 30 to 50 million film cutters made according to my invention in over 22 countries around the globe, as set forth in my previous Declaration.

8. Based on the data in the PWMR, the fact that (based on our company's marketing sales records) that 22 countries use our film cutter or copies thereof of my invention, and my best conservative estimates, I can safely and conservatively declare that 30-70 million of my cutters are sold around the globe.

9. Attached hereto as Exhibit H is documentation, including a spreadsheet provided by SC Johnson/Saran showing its estimate in early 2004 for the sale of 9.6 million pieces of the AEP slide cutter which is the subject of the instant application.

10. To supplement my previous Declaration, the commercial success of the AEP film

cutter, as described above and based on independent and reliable data, which is the subject of the instant patent application, penetrated as much as 25% of the retail sales market, *with zero dollars spent in marketing or advertising*. Thus, this commercial success was realized on the merits of the product alone.

11. Patents have been granted to AEP in Canada, Australia and New Zealand, the only foreign countries where applications were made that correspond to the instant application.

Copying Of The Invention

12. As I stated in my previous Declaration, there was and is wide spread copying of the invention covered by the instant application.

13. Attached hereto as Exhibit I are photographs of the Anchor Wrap Packaging product. As shown in the second page of this Exhibit is a photograph of a copy of the slide cutters of the instant invention that have been copied and sold by Anchor Wrap Packaging at least as early as 2004. We have investigated examined these slide cutters and have determined that they are copies of the slide cutters of the instant invention.

14. Attached hereto as Exhibit J is an excerpt from a Reynolds product locator web page, which shows Reynolds' sales of "EZ slide" with its plastic wrap. We have investigated examined the EZ slide cutters and have determined that they are copies of the slide cutters of the instant invention.

15. Attached hereto as Exhibit K are photographs of the Diamant Films Inc., of Canada, product. As shown in this Exhibit, the Diamant product is sold with a copy of the slide cutters of the instant invention that have been copied. The Diamant copy of our slide cutter has been sold up to this year. We have investigated examined these slide cutters and have determined that they are copies of the slide cutters of the instant invention.

16. Attached hereto as Exhibit L are documents pertaining to the copying of the slide cutter of the instant invention by Pliant Corporation, Polyvinyl Company and Metal Edge International, Inc. This information was supplied to us by our business partner Sonoco. As evidenced by this Exhibit, as of approximately, 2008, Pliant was selling copies of the slide cutter of the instant invention, copied and supplied by Polyvinyl, in what we believe to be significant amounts until they lost their account with Costco. However, after the loss of the Costco account,

Pliant continued to sell copies of the invention, but in lesser amounts. Also shown in Exhibit L, are photographs of Metal Edge's products, which are sold with slide cutters. We have investigated examined these slide cutters and have determined that they are copies of the slide cutters of the instant invention. We believe that Metal Edge has promised to stop copying our invention after receiving our objections to their conduct. All of these companies are active in both the United States and Canada.

17. Attached hereto as Exhibit M is a copy of a patent application filed by Alcoa, Inc. As shown in this document, the claims filed in the Alcoa application, clearly describe the slide cutter of the instant invention. Thus, Alcoa has sought to patent the slide cutter of the instant application.

18. Attached hereto as Exhibit N is an identification of at least some of the companies that have copied our slide cutter, including Durable Packaging International. Based on our investigation and evaluation, these companies have copied the slide cutter of the instant invention during one period of time or another, as set forth above and my previous Declaration, although some of them have ceased their copying.

19. Together with my previous Declaration, this Supplemental Declaration supplies the "hard" evidence of commercial success and wide spread copying of the slide cutter of the invention of the instant patent application, as was requested in the most recent Official Office Action.

20. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and, further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing therefrom.

Serial No. 09/741,521

Docket No. 2112-342 US

Dated: December 9, 2009


Paul Verharte